



UNITED STATES SENATE
**REPUBLICAN
POLICY COMMITTEE**

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Half a Century and \$7 Billion Later, Who Wants to Go Back to Square One?

**The Senate Should Affirm the President's
Approval of the Nation's Nuclear
Waste Repository Site**

For more than half a century, the Federal Government has sought a site for the permanent storage of spent nuclear fuel and high-level radioactive waste from both federal and private-sector sources. On February 15, 2002, President Bush recommended that Yucca Mountain in Nevada serve as that site.

The Nuclear Waste Policy Act of 1982 (as amended in 1987), allows the governor of the state in which the recommended site is located to veto the President's recommendation. If that veto occurs, the law then provides for Congress to vote on whether the governor's veto will stand or whether the President's recommendation will prevail. On April 8, 2002, Nevada Governor Kenny Guinn did veto the President's recommendation. If that veto stands, the Yucca Mountain program halts immediately. The law does not provide for a next step.

On May 8, 2002, the House of Representatives overwhelmingly rejected Governor Guinn's veto by a vote of 306 to 117 after only two hours of debate. On June 5, the Senate Energy and Natural Resources Committee reported its bill (S.J. Res. 34) rejecting the Governor's veto and supporting the President's recommendation by a vote of 13-10, clearing the way for a vote by the full Senate.

Yucca Mountain Opponents Hope Procedural Hurdle Will Prevent Vote

The Nuclear Waste Policy Act requires a simple majority vote (51) of Senators for passage of the joint resolution – and in fact a majority of Senators is expected to vote in favor. However, a move is afoot to prevent the resolution from ever coming to a vote.

Congress Imposed on Itself Special Procedures

When Congress passed the Nuclear Waste Policy Act, it expressed concern with the growing amount of spent nuclear fuel stored around the country and the potential environmental consequences of

leaving it in so many places. Congress was concerned enough to bind itself to an expedited set of procedures for the critical purpose of ensuring that a decision on the storage site be made. The expedited procedures have resulted in a deadline for the Senate: it must vote on the joint resolution by July 27, 2002. If the Senate agrees with the President and the House and passes the resolution, Governor Guinn's veto is rejected and the Department of Energy (DOE) can proceed to the next step in the process – applying for a Nuclear Regulatory Commission license to construct and operate the site.

The expedited procedures provide that a motion to proceed to consideration of a joint resolution of disapproval shall be:

- ▶ In order at any time, **by any Senator;**
- ▶ Highly privileged; and
- ▶ Not subject to debate.

Consideration of the joint resolution shall:

- ▶ Allow a maximum 10 hours of debate equally divided;
- ▶ Not allow a motion to recommit;
- ▶ Allow appeals of rulings of the Chair to be decided without debate;
- ▶ Provide that after the expiration or yielding back of time, there will be a single quorum call and vote on final passage; and
- ▶ Not allow for a motion to reconsider.

What if Congress Fails to Approve the President's Recommendation for the Site?

If a vote does not occur by July 27 (or if the resolution does not pass), then Governor Guinn's veto stands. In the meantime, 45,000 metric tons of spent fuel from commercial nuclear reactors, 2,500 metric tons of spent fuel from military research and production reactors, and more than 100 million gallons of high-level radioactive defense waste will remain where it is – stored at 131 sites in 39 states. Each year thereafter, 2,000 tons of materials will be added to the total.

While the law is silent on what happens if the Governor's veto stands, presumably Congress would have to act to begin investigations at another site – which could include those sites previously considered in the process [see p. 4]. In the meantime, the \$7 billion spent on this project to date will have been wasted.

Beyond the \$7 billion already spent on Yucca Mountain, DOE estimates the overall cost of the Yucca Mountain Project will be about \$50 billion from 2001 to site closure in 2119. Yet if the waste remains in temporary storage spread all over the country, DOE projects costs to be in the trillions of dollars. This figure does not even account for DOE's liability for failure to take the waste off the hands of commercial facilities, the cost of which the electric power industry estimates will be as much as \$80 billion. The Nuclear Waste Fund (paid for by electricity customers) will continue to pay for on-site

storage, but the liability costs (which DOE will not estimate due to the possibility of further litigation) will be paid out of the Federal Treasury, e.g., taxpayers.

Energy Secretary Abraham, in his prepared statement before the Senate Energy and Natural Resources Committee on May 16, 2002, made the following observation:

“A decision not to override ends the process entirely. It leaves the waste where it is, with Congress retaining its responsibilities to deal with the waste, but without a plan to do so.

“...It will not go to a single repository, it will end up in a variety of locations, under a variety of different transportation processes, in my judgement in a very uncoordinated way, and in a fashion that I do not think really reflects the best interests of the Nation from any of a variety of perspectives.”

The Majority Opinion Must Prevail on This Issue of National Concern

As previously noted, Congress has expressed growing concern with the possible consequences of allowing continuation of so many storage sites for spent nuclear fuel – concern that only has been heightened by the events of September 11. Congress imposed on itself the expedited set of procedures to ensure that a decision on this critical issue be made. The Senate was concerned enough to specify that *any Senator* could make the motion to proceed to consideration of the approval resolution, thereby ensuring that the resolution would be subject to debate and a vote, regardless of the position of the Majority Leader.

While Senate Rules do not prohibit any Senator from exercising his or her right to move to any bill any time he or she is recognized, Senators ordinarily will refrain from exercising this authority in deference to the Majority Leader, who by custom sets the Senate’s schedule. Yet this Majority Leader has expressed reluctance to make the motion to proceed to the Yucca Mountain resolution. The nuclear waste policy law envisioned such a scenario, and thereby specified that “any Senator” could make the motion. The Majority Leader conceded the inevitability of such a vote and clearly outlined the extraordinary procedures contained in the nuclear waste policy law in response to questions from reporters on June 19.

I have no desire to bring it up. It doesn’t take unanimous consent to schedule it. Any Senator can bring it up. . . I don’t think you can have a fight on the motion to proceed. I’m told that the law is so tightly drawn that if a motion is made, it’s not debatable. . . . And then there’s a prescribed time for the debate, which I believe is 10 hours. So as I envision it, a Senator goes to the floor, he or she seeks recognition, makes a motion to proceed on Yucca Mountain. Immediately there would be a vote. If 51 senators agree, or a majority of those present agree, that we ought to proceed, the 10-hour time frame for the debate occurs, after which there would be a vote. [Senator Daschle, Federal Documents Clearing House transcript, 6/19/02]

Senator Daschle observed further on the prerogative of the Majority Leader with respect to the motion to proceed:

. . . I think that any time you undermine that prerogative or that precedent, it does become problematic from the point of view of keeping order in the Senate. But as I said yesterday, this is prescribed not by Senate rule, but by law. And so this was a decision the Senate made in 1982. . . . So we just have to live with that decision now, unless we could change the law, which we know we can't do. [FDCH transcript, 6/19/02]

Clearly, the 50-year old issue of where and how to dispose of the nation's nuclear waste and spent fuel is not ordinary business. It is an extraordinary issue. A motion to proceed to the Yucca resolution will set no new precedent as to the ordinary working of the Senate. It will not assault the rights of the Majority Leader, who freely will make the decision as to whether he himself (or someone he designates) makes that motion.

A Tortuous 50-Year Path to Get Where We Are Today

The Nuclear Waste Policy Act allows the Secretary of Energy to consider *only* Yucca Mountain as a site for the permanent storage of spent nuclear fuel from commercial nuclear reactors and high-level radioactive waste from Federal nuclear weapons and reactor development and production facilities. To restart the search for a new site or sites, Congress must pass new legislation. Given the tortuous path that led to the 1982 Act and 1987 amendments, it is likely that no replacement will be found for decades. Here's a quick review of the last 50 years' work:

- ▶ The Federal government began looking in the early 1950s for ways to manage waste materials from nuclear weapons research and later from commercial nuclear reactors.
- ▶ In 1980 President Jimmy Carter was able to get a consensus for pursuing a process to find potential repository sites, culminating with the passage of the 1982 law.
- ▶ In 1983 DOE identified nine potential sites for the long term repository: Hanford, Washington; Davis and Lavender Canyons in Utah; Richton Dome and Cypress Creek Dome in Mississippi; Vacherie Dome in Louisiana; Deaf Smith County and Swisher, Texas; and Yucca Mountain, Nevada.
- ▶ In 1985 the Energy Secretary narrowed the site choices to: Hanford, Davis Canyon, Deaf Smith County, Richton Dome, and Yucca Mountain.
- ▶ In 1986 the Secretary selected and the President approved three sites for characterization: Hanford, Deaf Smith County, and Yucca Mountain.

- ▶ In 1987 Congress designated Yucca Mountain as the only site that the Secretary could consider, but still required the Secretary to study Yucca Mountain to determine if the site is suitable for a repository.

Congressional approval of the President's recommendation to move forward with the Yucca Mountain site **does not mean that nuclear materials will be moved to the facility**. Instead, Congressional approval means only that DOE then can begin the application process to the Nuclear Regulatory Commission for a license to construct and operate Yucca Mountain. DOE expects to file such an application by late 2004. If the license application – which will take several years – is approved, only then will construction commence. Shipments of material could begin as early as 2010.

What the Senate Must Do

In his opening statement on the Yucca Mountain resolution, Energy and Natural Resources Committee Chairman Jeff Bingaman characterized the task before Congress:

. . . The authors of the Nuclear Waste Policy Act recognized that, as Representative Morris K. Udall put it, 'in the final analysis, the nuclear waste repository is a project in the national interest, which must be subject to a national decision.' **They ensured that the decision whether to approve the Secretary's site recommendation would rest, not with the Governor or the President, but with Congress. The expedited procedures for considering the resolution to override the Governor's veto were designed to ensure that both Houses of Congress would have the opportunity to vote on the question, and those procedures were the necessary tradeoff for the state veto.**" [S. Hrg. 107-483, p. 2; emphasis added.]

A motion to proceed to this utterly critical issue does not, as previously asserted, assault the rights of the Majority Leader. Rather, it merely assures that one state governor will not have the final word on such a critical national environmental issue. And so, the motion must be made so that the next step may be taken to move toward a solution of this serious national issue.

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